

1 PHILLIP A. TALBERT  
United States Attorney  
2 BRIAN W. ENOS  
Assistant United States Attorney  
3 2500 Tulare Street, Suite 4401  
Fresno, Ca 93721  
4 Telephone: (559) 497-4000  
Facsimile: (559) 497-4099  
5

6 Attorneys for Plaintiff  
United States of America  
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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

11 Case No: 1:21-cr-00240 JLT/SKO

12 Plaintiff,

13  
14 **STIPULATION TO: (1) VACATE FEBRUARY 1,  
2023 STATUS CONFERENCE; (2) SET  
NOVEMBER 13, 2023 TRIAL CONFIRMATION  
HEARING; AND (3) SET DECEMBER 12, 2023  
TRIAL DATE; ORDER**

15 v.

16 RICARDO GUERRERO,

17 Defendant.

18  
19 Ctrm: 8

Hon. Sheila K. Oberto

20 THE PARTIES HEREBY STIPULATE, through their respective counsel, Assistant United  
21 States Attorney, Brian W. Enos, on behalf of the government, and Scott A. Tibbedeaux, Esq., on behalf  
22 of defendant Ricardo Guerrero (“Guerrero”), that this action’s: (1) February 1, 2023, status conference  
23 be vacated; (2) trial confirmation hearing be set for Monday, November 13, 2023; and (3) trial date be  
24 set for Tuesday, December 12, 2023.

25 This case is set for a status conference on Wednesday, February 1, 2023. Dkt. 28. On May 13,  
26 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of  
27 California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to

1 continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General  
2 Order 611 issued on March 17, 2020, . . . with additional findings to support the exclusion in the Judge’s  
3 discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-  
4 by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the  
5 request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order  
6 will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and  
7 previous General Orders were entered to address public health concerns related to COVID-19.

8 On May 26, 2021, and in part “given the progress in vaccination programs and the resulting  
9 lowering of risk to public health as evidenced by reductions in rates of infection, hospitalization and  
10 death due to COVID-19”, this Court issued General Order 631. Within General Order 631, this Court:  
11 (1) reopened the court to the public, (2) gave each judge the authority to “determine whether to hold  
12 proceedings over which that Judge presides in person in a courtroom or by telephone or  
13 videoconference” and (3) if “any Judge [elects to conduct] any criminal proceeding by telephone or  
14 video conference . . . [the Court] continues to authorize the use of telephone or video conference with a  
15 defendant’s consent.” General Order 631, ¶¶ 1, 4 and 5. (E.D. Cal. May 26, 2021). The court’s above  
16 protocols were recently extended through March 16, 2023. General Order 656 (E.D. Cal. December 18,  
17 2022).

18 Although the General Orders address the district-wide health concern, the Supreme Court has  
19 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
20 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
21 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
22 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
23 509; see also *United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
24 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
25 or in writing”).

26 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
27 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
28

1 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
2 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
3 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
4 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
5 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
6 and the defendant in a speedy trial.” *Id.*

7 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
8 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
9 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
10 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
11 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
12 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see also*  
13 *United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
14 following the September 11, 2001 terrorist attacks and the resultant public emergency).

15 The coronavirus is posing a similar, albeit much more enduring, “appreciable difficulty” to the  
16 prompt proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
17 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
18 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL  
19 1589359 at \*7 (9<sup>th</sup> Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is  
20 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked  
21 speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a  
22 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
23 of the charges defendant faces, and in particular whether the defendant is accused of violent crimes; (6)  
24 whether there is a reasons to suspect recidivism if the charges against the defendant are dismissed; and  
25 (7) whether the district court has the ability to safely conduct a trial. *Id.*

26 In light of the foregoing, this Court should consider the following case-specific facts in finding  
27 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)

1 (Local Code T4). If continued, this Court should designate a new date for this matter's next status  
2 conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial  
3 continuance must be "specifically limited in time").

4 **STIPULATION**

5 The parties base this stipulation on good cause and therefore ask the court to endorse this  
6 stipulation by way of formal order. Specifically,

- 7 1. The grand jury returned an indictment regarding this matter on October 7, 2021, alleging  
8 counts including sexual exploitation of a minor, in violation of 18 U.S.C. § 2251(a) [Count  
9 One]; coercion and enticement of a minor, in violation of 18 U.S.C. § 2422(b) [Count Two];  
10 and registered sex offender committing felony offense involving a minor, in violation of 18  
11 U.S.C. § 2260A [Count Three]. Dkt. 1. On January 17, 2023, the court issued a minute  
12 order "direct[ing] the parties] to meet and confer and select a mutually convenient date for  
13 trial." Dkt. 28. Within this same order, the court further advised that "the parties may  
14 stipulate to the trial date, with an appropriate exclusion of time." Ibid.
- 15 2. The parties have since met and conferred about both a trial confirmation hearing and trial  
16 date, and cleared these dates with chambers. In light of these efforts, the parties ask the court  
17 to endorse their stipulation to set the trial confirmation to take place on Monday, November  
18 13, 2023, in Courtroom 4, and further set trial to commence on Tuesday, December 12, 2023,  
19 in Courtroom 4. The parties estimate that trial should be completed within 3-4 full days.
- 20 3. The parties continue to be engaged in plea negotiations, and are hopeful that an agreement  
21 might be reached that will eliminate the need for trial. On this end, counsel for the  
22 government has drafted a written plea offer, which it will deliver to the defense upon  
23 obtaining internal approvals. If this matter is not resolved prior to trial, however, defense  
24 counsel will need additional time to investigate the case including potential defenses, hire  
25 and interact with experts, review electronic evidence in accord with 18 U.S.C. § 3509 of the  
26 Adam Walsh Act, contact potential witnesses, complete its review of discovery and  
27 supplemental discovery, and communicate with Mr. Guerrero. Counsel for the government

1 will ensure that any additional information that it locates and should be produced pursuant to  
2 Rule 16 is indeed identified and produced.

3 4. The parties identified the December 12, 2023, trial date in light of their analyses of relevant  
4 trial calendars, agent and other witness availability.  
5 5. Counsel for defendant believes that failure to grant the above-requested continuance would  
6 deny him the reasonable time necessary for effective preparation, taking into account the  
7 exercise of due diligence.  
8 6. The parties therefore stipulate that the period of time from February 1, 2023, through  
9 December 12, 2023 is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and  
10 3161(h)(7)(B)(i) and (iv) because it results from a continuance granted by the Court at the  
11 parties' request on the basis of the Court's finding that the ends of justice served by taking  
12 such action outweigh the best interest of the public and the defendant in a speedy trial.

13 7. IT IS SO STIPULATED.

14  
15 Dated: January 23, 2023

PHILLIP A. TALBERT  
United States Attorney

16  
17 By: /s/ Brian W. Enos  
18 Brian W. Enos  
Assistant United States Attorney

19  
20 (As authorized 1/23/23)

21 Dated: January 23, 2023

22 By: /s/ Scott A. Tibbedeaux  
Scott A. Tibbedeaux, Esq.  
Attorney for Defendant  
Ricardo Guerrero

## ORDER

**IT IS ORDERED.**

- (1) the status hearing currently set for Wednesday, February 1, 2023, in Courtroom 8 is vacated;
- (2) a trial confirmation hearing is set to be heard on Monday, November 13, 2023, in Courtroom 4; and
- (3) trial is set to commence in Courtroom 4 on Tuesday, December 12, 2023.

IT IS FURTHER ORDERED THAT the period of time from February 1, 2023, through

9 December 12, 2023, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A) and 3161(h)(7)(B)(i)  
10 and (iv) because it results from a continuance granted by the Court at the parties' request on the basis of  
11 the Court's finding that the ends of justice served by taking such action outweigh the best interest of the  
12 public and the defendant in a speedy trial.

Dated: 1/24/2023

Sheila K. Oberto

Honorable Sheila K. Oberto  
United States Magistrate Judge